

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 JOSEPH ANDREW HYLKEMA,

Case No. 2:12-cv-01652-RSM

Plaintiff,

v.

11 MIDLAND CREDIT MANAGEMENT, INC.,
12 a Kansas corporation; CARLOS COLLINS
13 and JANE DOE COLLINS, husband and
wife and the marital communities thereof,
jointly and severally,

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants.

16 Defendants Midland Credit Management, Inc. ("MCM") and Carlos Collins ("Mr.
17 Collins") (collectively, "defendants")¹ answer plaintiff's complaint as follows:

1. NATURE OF ACTION

19 1.1 Admit that plaintiff purports to bring this lawsuit for alleged damages
20 based on alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692
21 *et seq.* (“FDCPA”), the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*
22 (“TCPA”), and the Washington Consumer Protection Act, RCW 19.86.020 (“WCPA”);
23 but deny any wrongdoing or violation of those statutes. Defendants deny the remaining
24 allegations in paragraph 1.1.

¹ As stated in paragraph 10.3 below, Mr. Collins is not married; hence, "Jane Doe Collins" does not exist and is improperly named as a defendant in this case.

2. JURISDICTION AND VENUE

2.1 Admit that this court has subject matter jurisdiction, and that venue is proper in this district. Defendants deny the remaining allegations in paragraph 2.1.

3. PARTIES AND BACKGROUND

3.1 Admit that MCM had communications with plaintiff regarding the subsequent account at issue (“the account”). Defendants deny the remaining allegations in paragraph 3.1, based in part on a lack of sufficient information to form a belief as to the truth of those allegations.

3.2 Admit that MCM is a Kansas corporation with its principal place of business at the described address; that Mr. Collins is employed by MCM at its San Francisco office; and that at least some of the acts at issue originated from that location. Defendants deny the remaining allegations in paragraph 3.2.

3.3 Admit that MCM is licensed as a collection agency by the Washington Department of Licensing; that it is authorized to do business in Washington; and Corporation Service Company is its registered agent in the State of Washington. Defendants deny the remaining allegations in paragraph 3.3.

3.4 Admit that Mr. Collins is an adult; that he is an employee of MCM; and that
iff claims to be suing him in his personal capacity. Defendants deny the remaining
ations in paragraph 3.4, including any allegation that Mr. Collins committed
gdoing or has any personal liability for the events at issue.

3.5 Denies the allegations in paragraph 3.5.

3.6 Deny the allegations in paragraph 3.6, based in part on a lack of sufficient information to form a belief as to the truth of those allegations.

3.7 Admit that MCM generally engages in the business of collecting
quent accounts, including through the use of the mail and telephone; that Mr.

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Attorneys
888 SW Fifth Avenue, Suite 500

1 Collins is employed by MCM; and that MCM had communications with plaintiff regarding
2 the account. Defendants deny the remaining allegations in paragraph 3.7.

3 3.8 Deny the allegations in paragraph 3.8, based in part on a lack of sufficient
4 information to form a belief as to the truth of those allegations.

5 3.9 Admit that Mr. Collins is an employee of MCM; that he was hired, and is
6 trained and supervised, by MCM; and, based on information and belief, that he was
7 acting within the course and scope of his employment. Defendants deny the remaining
8 allegations in paragraph 3.9.

9 **4. STATEMENT OF FACTS**

10 4.1 Admit that MCM attempted to contact plaintiff regarding the account; but
11 deny the remaining allegations in paragraph 4.1, based in part on a lack of sufficient
12 information to form a belief as to the truth of those allegations.

13 4.2 Admit that MCM attempted to contact plaintiff regarding the account; but
14 deny the remaining allegations in paragraph 4.2, based in part on a lack of sufficient
15 information to form a belief as to truth of those allegations.

16 4.3 Admit that the telephone number (800) 265-8825 belongs to MCM, but
17 deny the remaining allegations in paragraph 4.3.

18 4.4 Deny the allegations in paragraph 4.4.

19 4.5 Admit that MCM attempted to contact plaintiff regarding the account, but
20 denies the remaining allegations in paragraph 4.5.

21 4.6 Deny the allegations in paragraph 4.6.

22 4.7 Deny the allegations in paragraph 4.7.

23 4.8 Admit that, on July 3, 2012, MCM received one or more phone calls from a
24 person who identified himself as plaintiff; and that the account was discussed during
25 those telephone calls. Defendants deny the remaining allegations in paragraph 4.8,

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1 based in part on a lack of sufficient information to form a belief as to truth of those
2 allegations.

3 4.9 Admit that MCM has reported the account to one or more credit reporting
4 agencies, but deny the remaining allegations in paragraph 4.9.

5 4.10 As to paragraph 4.10:

6 4.10.1 Admit that MCM maintains, in the regular course of business, records
7 relating to activity on the account. Defendants deny the remaining allegations in
8 paragraph 4.10.1.

9 4.10.2 Deny the allegations in paragraph 4.10.2.

10 4.10.3 Object to the allegations in paragraph 4.10.3 as seeking information
11 protected by the work product doctrine and/or the attorney-client privilege.

12 4.10.4 Object to the allegations in paragraph 4.10.4 as seeking information
13 protected by the work product doctrine and/or the attorney-client privilege.

14 4.10.5 Object to the allegations in paragraph 4.10.5 as seeking information
15 protected by the work product doctrine and/or the attorney-client privilege.

16 4.10.6 Object to the allegations in paragraph 4.10.6 as seeking information
17 protected by the work product doctrine and/or the attorney-client privilege.

18 4.10.7 Object to the allegations in paragraph 4.10.7, to the extent it seeks
19 information protected by the work product doctrine and/or the attorney-client privilege;
20 otherwise, denied.

21 4.11 Deny the allegations in paragraph 4.11.

22 4.12 Deny the allegations in paragraph 4.12.

23 **5. FIRST CAUSE OF ACTION – VIOLATION OF FDCPA**

24 **COUNT ONE**

25 5.1 Deny the allegations in paragraph 5.1.

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COUNT TWO

2 5.2 Deny the allegations in paragraph 5.2, based in part on a lack of sufficient
3 information to form a belief as to truth of those allegations.

COUNT THREE

5 5.3 Deny the allegations in paragraph 5.3.

6. SECOND CAUSE OF ACTION – VIOLATION OF TCPA

7 6.1 Deny the allegations in paragraph 6.1, based in part on a lack of sufficient
8 information to form a belief as to truth of those allegations.

7. THIRD CAUSE OF ACTION – VIOLATION OF WCPA

GENERAL ALLEGATION

11 7.1 Admit that the cited provisions of the RCW speak for themselves, but deny
12 the remaining allegations in paragraph 7.1.

COUNT ONE – VIOLATION OF RCW 19.16.250(12)(a)

14 7.2 Deny the allegations in paragraph 7.2.

8. *BONA FIDE* ERROR DEFENSE

16 8.1 Admit that the cited cases speak for themselves, but deny the remaining
17 allegations in paragraph 8.1.

9. PRAYER FOR RELIEF

19 Defendants deny that plaintiff is entitled to any of the relief sought in paragraphs
20 9.1 through 9.1.3 of the complaint.

GENERAL DENIAL

22 Except as specifically admitted, defendants deny each and every allegation of
23 the complaint.

AFFIRMATIVE DEFENSES

25 10.1 Plaintiff fails to state factual matter sufficient to constitute a claim against
26 defendants that is plausible on its face.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES - Page 5 COSGRAVE VERGEER KESTER LLP
Attorneys
888 SW Fifth Avenue, Suite 500

1 10.2 Plaintiff fails to state factual matter sufficient to constitute a claim for
2 personal liability against Mr. Collins.

3 10.3 Mr. Collins is not married; hence, "Jane Doe Collins" does not exist and is
4 improperly named as a defendant in this case.

5 10.4 To the extent plaintiff is able to prove a violation of the FDCPA, any such
6 violation resulted from a bona fide, unintentional error notwithstanding the maintenance
7 of procedures reasonably adapted to avoid any such error.

8 10.5 Plaintiff suffered no actual damages as a result of defendants' alleged
9 conduct and, therefore, is not entitled to recover any damages, fees or costs.

10 10.6 Plaintiff's damages, if any, were the result of plaintiff himself or of others
11 for whom defendants are not responsible or liable.

12 10.7 Plaintiff's damages, if any, were aggravated by his own failure to use
13 reasonable diligence to mitigate them.

14 10.8 Plaintiff's damages, if any, are offset by amounts that he owes on the
15 account.

16 10.9 Defendants acted in good faith at all times.

17 10.10 Service on one or more defendants was insufficient.

18 10.11 The calls MCM was making, and the equipment it was using to make
19 those calls, are not regulated by the TCPA.

20 10.12 Manually dialed telephone calls made by MCM are not actionable under
21 the TCPA.

22 10.13 Plaintiff consented to receiving calls that were made, if any, to his cellular
23 telephone.

24 10.14 Plaintiff is not represented by an attorney and, thus, cannot recover any
25 attorney's fees.

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1 **RESERVATION OF RIGHT TO AMEND**

2 Defendants reserve their right to amend and to add further defenses or claims as
3 relevant information becomes available.

4 WHEREFORE, defendants pray for judgment in their favor and against plaintiff;
5 for dismissal of plaintiff's claims with prejudice; for defendants' attorney fees, costs and
6 disbursements; and for any further relief that the court decides is proper.

7 DATED: October 19, 2012

8 COSGRAVE VERGEER KESTER LLP

10 */s/Robert E. Sabido*

11 _____
12 Robert E. Sabido, WSBA No. 29170
rsabido@cosgravelaw.com
13 Telephone: (503) 323-9000
14 Fax: (503) 323-9019

15 Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**
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I hereby certify that on October 19, 2012, I electronically filed the foregoing

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES with the Clerk of the Court

using the CM/ECF System which will send notification of such filing to the following:

Joseph Andrew Hylkema
1425 Broadway, #123
Seattle, WA 98122
Plaintiff *pro se*

DATED: October 19, 2012

/s/*Robert E. Sabido*

Robert E. Sabido